DOCUMENT RESUME

ED 125 007 CS 501 413

AUTHOR	McDermid, Nancy Gossage; Timmis, John H., III
TITLE	Closing Arguments in the Patricia Hearst Trial: March 18-19, 1976; and Thought Control in the Patricia Hearst Trial.
INSTITUTION	California State Univ., Northridge. Dept. of Speech Communication.
PUB DATE	25 Mar 76
NOTE	29p.
JOURNAL CIT	Exetasis; v2 n4 Entire Issue March 25, 1976
EDRS PRICE	MF-$0.83 HC-$2.06 Plus Postage.
DESCRIPTORS	*Conditioning; *Court Litigation; *Debate; Individual Psychology; *Lawyers; *Legal Problems; Persuasive Discourse; *Rhetorical Criticism
IDENTIFIERS	Bailey (F Lee); Browning (James); *Hearst (Patricia) Trial

ABSTRACT

The rhetorical criticism of the Patricia Hearst trial published in this quarterly journal consists of two articles written before a verdict was reached. The first, "Closing Arguments in the Patricia Hearst Trial," by Nancy Gossage McDermid, reflects the author's perception of stylistic and substantive differences between the arguments of the defense (F. Lee Bailey) and of the prosecution (James Browning). "Thought Control in the Patricia Hearst Trial," by John H. Timmis III examines the position of the defense with regard to its "arguable" legal standing and its relation to psychology. (KS)

****
* Documents acquired by ERIC include many informal unpublished *
* materials not available from other sources. ERIC makes every effort *
* to obtain the best copy available. Nevertheless, items of marginal *
* reproducibility are often encountered and this affects the quality *
* of the microfiche and hardcopy reproductions ERIC makes available *
* via the ERIC Document Reproduction Service (EDRS). EDRS is not *
* responsible for the quality of the original document. Reproductions *
* supplied by EDRS are the best that can be made from the original. *
****

_ JW/ERIC

EXETASIS

Vol. 2 No. 4 March 25, 1976 $1.00

U S DEPARTMENT OF HEALTH, EDUCATION & WELFARE NATIONAL INSTITUTE OF EDUCATION

THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL NATIONAL INSTITUTE OF EDUCATION POSITION OR POLICY

ED125007

CLOSING ARGUMENTS
IN THE PATRICIA HEARST TRIAL:
MARCH 18-19, 1976

PREPARED BY NANCY GOSSAGE McDERMID

. 3

THOUGHT CONTROL IN THE PATRICIA HEARST TRIAL

PREPARED BY JOHN H. TIMMIS III

. 20

ERIS

Quotes on the Hearst trial from the Los Angeles *Times*

. 27

CS 501 4/3

Rhetorical criticisms published in *EXETASIS* are completed within forty-eight hours following presentation of the rhetorical act.

EDITORIAL STAFF

FRED MCMAHON — Editor and Publisher
California State University, Northridge
GAGE WILLIAM CHAPEL — Associate Editor
Occidental College, Los Angeles
WILLIAM FREEMAN — Associate Editor
California State University, Northridge

REGIONAL EDITORS

DAN F. HAHN — New York City-New England
Queens College, Flushing, NY
KATHLEEN M. JAMIESON — Washington, DC-Mid-Atlantic
University of Maryland, College Park, MD
NANCY MCDERMID — Southwest
San Francisco State University
IRVING J. REIN — Midwest
Northwestern University, Evanston, IL
JOHN STEWART — Northwest
University of Washington, Seattle
DONALD E. WILLIAMS — Southeast
University of Florida, Gainesville

(Typescript prepared by Stephanie Swift)

EXETASIS **is published four times annually by Fred McMahon, Department of Speech Communication, California State University, Northridge, CA 91324.** **Copyright 1976 by Fred McMahon. All rights reserved.** ***EXETASIS*** **is distributed by first class mail from Northridge, CA 91324. Subscriptions $4.00 annually. Single issues $1.00.**

PERMISSION TO REPRODUCE THIS COPYRIGHTED MATERIAL HAS BEEN GRANTED BY

Fred McMahon

TO ERIC AND ORGANIZATIONS OPERATING UNDER AGREEMENTS WITH THE NATIONAL INSTITUTE OF EDUCATION. FURTHER REPRODUCTION OUTSIDE THE ERIC SYSTEM REQUIRES PERMISSION OF THE COPYRIGHT OWNER.

CLOSING ARGUMENTS IN THE PATRICIA HEARST TRIAL: MARCH 18-19, 1976

PREPARED BY NANCY GOSSAGE McDERMID*

United States District Judge Oliver J. Carter worded for the jury the key question in the Patricia Hearst case in simple, sterile terms of a disjunctive syllogism: Was the defendant a willing participant in the robbery of the Sunset branch of the Hibernia Bank in San Francisco on April 15, 1974? Or did she join in the holdup with members of the Symbionese Liberation Army, which had kidnapped her ten weeks earlier, because they had brainwashed her and because she was afraid they would kill her?

The closing arguments which concluded the thirty-nine day trial were only a minute part of a total persuasive process. Before this analysis of those final speeches is published, the jury will have reached its verdict. However, the actual effect on that verdict of that one day of advocacy with all of the strategies and structure and style of the opposing attorneys--will not necessarily be mirrored by the verdict. My analysis is not of the trial or of the jury process or of the case strategy, but of the closing arguments. I attended the trial on two days, March 18 and March 19, 1976. I wrote this paper before the jury returned the verdict.

---

*NANCY GOSSAGE McDERMID is professor and chairperson in the Department of Speech Communication, San Francisco State University, and an attorney.

First, you need to know "the critic." I relished being in that courtroom. I know well the dangers of hubris; I do not pretend to you that this analysis is objective; I have tried to identify my own evaluative judgments and to indicate the basis for those judgments. I am an attorney. I have often participated in and observed courtroom advocacy. I had followed the details of the kidnapping, the tapes, the food giveaway, the bank robbery, the shoot-out at Mel's Sporting Goods Store, the SWAT attack on the yellow stucco house in Los Angeles, the long months before the arrest, and the eight weeks of the trial. As I listened to the prosecutor, James Browning, and to the defense attorney, F. Lee Bailey, on March 18, 1976, I thought of Patricia Hearst's own words in the jail visiting room: "It's so weird. It's all so weird, isn't it?" Almost an echo of Steven Weed's, "It is so weird, so entirely strange."[1] I thought also of the chilly description of the judicial process that I had read in law school: "We administer justice by an adversary proceeding, which is as much as to say, we set the parties fighting."[2]

Meet the two pugilists: United States Attorney James Browning, who had not actually tried a case in more than five years, described in the media as "rambling," "disorganized," "dull," "not flashy." F. Lee Bailey, dubbed by the press and by his press agents as "sensational," "magnetic," "tenacious," "America's number one trial lawyer." I admit to being momentarily lured by Kenneth Burke to grapple with these two champions and their closing arguments by stressing "identification"; for, in truth, I could almost hear the vibrations of Bailey becoming "consubstantial" with the jury. One commentator was sure that Bailey had "transfixed" the jury. However, that "old rhetoric" bias of mine prevailed. You will, therefore, find my analysis couched in terms of the deliberately designed techniques and cunningly calculated styles of Bailey and Browning; the Burkeian "acting together" script will have to wait for another playwright. For me, the criminal trial is trial by ordeal--with language and all personal and stylistic resources commandeered to assure a victory for *each* adversary. So I place

closing arguments in the web of the legal judicial system; those speeches are grounded in that moment, that milieu of that courtroom.

On March 18, as I waited for the court crier to call us to our feet so that the judge could ascend his priestly perch, I studied the ecology of that courtroom on the nineteenth floor of the Federal Courthouse. I noted the flag, the silver pitcher, the paper cups, the easel for exhibits, the television scanning cameras, the mikes, the big brown leather chairs for the lawyers, the wooden benches for the public, the dais. I studied the body language of "pale, impassive" Patty and her "stoic" family. Browning entered a few minutes late and seemed to be fidgeting. Bailey was early; he paced, drank out of a paper cup, seemed to be "counting the house." During both the closing arguments and the judge's instructions, the jury seemed like ciphers to me. They appeared immobile, attentive, at times catatonic--marching in, sitting down, staring ahead. Bailey had once said that he likes military courts because the jury is disciplined. How will he describe this jury, identified only as "seven women, five men," after the verdict? The commentator, who claimed that the jury was "transfixed" by Bailey's final "theatrical" performance, said that he saw the eyes of one juror fill with tears. I saw no display of any emotion; but perhaps when someone interviews the twelve for one of those books that will indubitably be written about this trial, I shall be forced to admit again my failure at audience analysis. As I watched the stoney faces and stick-like bodies of jurors, I thought of old Clarence Darrow's almost "instinctive understanding of psychology and human emotions, coupled with unusual ability to communicate this understanding to juries."[3] When Darrow finished his three-day summary in the Leopold-Loeb trial, tears were streaming down even Judge Caverley's face. Part of the "weirdness" of the battle in the Hearst trial was the controlled aloofness of the gladiators; even the flamboyant passion of Bailey seemed practiced and postured. With too much precision, Bailey's rising crescendo was followed by the intimate,

often inaudible whisper. The two attorneys fought a good enough fight against each other; the defendant, truth, and justice were up-staged by the skill of these finalists in the big tournament. With a flow-chart, I could render the perfect verdict.

Even Judge Carter introduced the closing arguments by locking the doors so that the "final debate" could begin. He described this "time-honored process of debate" as the way in which truth is developed. He spoke right out of an old McBurney and Mills argumentation text as he instructed the prosecutor to develop all of his case during his constructive speech, not to "hold back and sandbag" by bringing in new material during the rebuttal. Carter cautioned the jury to listen to the arguments of the skilled adversaries--but to reserve for themselves all decisions.

First constructive by Browning--described as "dry," "matter of fact," "lacking in luster"--lived up to these adjectives especially during the first few fumbling minutes of the speech. Of course, Browning had amassed 295 exhibits during the eight-week trial, but even a novice debater is told to develop the knack for finding the right three by five card without having to shuffle through the whole deck. Browning's formal "Ladies and Gentlemen" seemed appropriate for his unanimated jury. His most direct communication was his begging the decision-makers to take evidence into the jury room, to listen to the tapes, to watch the movies. His "I hope you will do so" was as close as he could get to actual engagement with those in the box. As he swung the carbine, read the Tania notebook, fondled the little stone monkey, Browning was urging the jury to do the same.

The simple issue in Browning's two-hour argument was whether the defendant voluntarily, willfully participated in the bank robbery. He liked to enumerate segments of his supporting material by making lists of one, two, three. For example, he catalogued three pieces of physical evidence to develop his argument of "intent": 1) As depicted in the bank movie, she is swinging her weapon with verve and energy and moving with agility; 2) In her own handwriting, she tells how the bank robbery was planned because the SLA needed

money and because they all wanted to show that "Tania was alive and that her participation in the robbery was not bull shit."; 3) In the April 24, 1974, tape, her voice says that she and her comrades "expropriated" over $10,000 from the bank, that their weapons were loaded, that her comrades did not train their weapons on her, and that the suggestion that she had been brainwashed "was ridiculous to the point of being beyond belief." Again, in his argument, Browning worded the main issue as being "intent" and listed his three supporting points: 1) Circumstantial evidence of defendant's mental intent; 2) Physical evidence; and 3) Defendant's own credibility. Meticulously, he developed each of the areas. This organizational clarity was at times blurred by what I shall enumerate as my own one, two, and three--three distracting elements of his structure and style.

First, he often interrupted the thrust of his case by digressing to dull delineations of what seemed to be peripheral details. He kept nagging about the "operability" of Patty's weapon--protesting that the issue was really not important, persisting in discussing it. These meanderings did give Browning additional opportunities to hold the gun, snap the bolt back and forth, and caress the straight ammunition clip which could have fit "only the defendant's weapon." Another excursion off the main road of the case, which seemed a digression from the logical progression of the case, was Browning's determination to describe again and again the detail of each movement of each robber, each bank employee, each bystander. Browning was finally deterred from this verbal rerunning of the film by Bailey, who started walking across the front of the courtroom to look at the big drawing of the bank floor plan. Bailey would stand only a few feet from the jury, reacting just subtly enough to distract. The prosecutor ceased and desisted; he returned to the lectern and to his manuscript.

A second distraction was the repeated fumbling for a particular exhibit. In retrospect, I realize that the search for the right page or numbered bit

of evidence perhaps looked bungling because of the contrast with Bailey who had not one single note--not even key words scribbled on his cuffs. Bailey barely referred to any of the evidence--directly or indirectly. By comparison, Browning was encumbered, if not ensnared, by the manuscript, the marked exhibits, the memorabilia of the SLA.

Yet a third departure from the main course of the argument occurred when Browning would give a mini-lecture on a legal term such as *intent* or *burden of proof* or *beyond a reasonable doubt*. These were crucial concepts and should have been more carefully worked into the presentation. In a slippery way, Bailey shortened "beyond a reasonable doubt" to "beyond any doubt"; Browning used time in his rebuttal to give another Black's *Law Dictionary* clarification and to admonish Bailey for loosely leaving out the *reasonable*.

F. Lee Bailey approached the jury by getting the microphone out of his way and simulating an almost dyadic relationship with them. He pretended to devalue the closing arguments, claiming that "those of us who make a living out of this question the purpose of the final speeches." He suggested that it's called an argument, but it's really "exchanging ideas." He almost canonized the responsibility of the jury once they are "all alone, talking together." He suggested that there actually are those who are skilled in knowing when truth is truth and when truth is simulated (and that the defense called to the stand several such experts); but that in our system, we prefer to trust that judgment about truth, "not to the experts, but to the collective judgment of the jury." Bailey returned to this sacred role of the jury a number of times. He challenged the jury: "The SLA predicted this trial and persuaded Patty that coming back would get her twenty-five years. And if we can't break the chain at some point in their predictions, there are going to be other Patricia Hearsts." Bailey deftly delivered his own lecture on legal terms by defining "burden of proof" in terms of "presumption of innocence" which "Patty is wearing today." He switched burden of proof to the "risk of non-persuasion": "If we both fail to persuade you, I win." "If any doubt

remains, Patty Hearst is innocent." "If you are satisfied to a moral certainty that she is guilty, you'll have to use evidence not presented in this trial. We have given you all we have got. No one is ever going to be sure. They will be talking about the case for longer than I think I am going to talk about it. But a simple application of the rules, I think, will yield one decent result, and that is, there is not anything close to proof beyond a reasonable doubt that Patty Hearst wanted to be a bank robber." Was the jury able to extricate the concept of *burden of proof* from Bailey's emotional "What you know and you know in your hearts to be beyond dispute; there was talk about her dying and she wanted to survive. Thank God, so far she has." Browning only confused the legal issue in his rebuttal by saying, "She is not now clothed with innocence." Carter was ferocious in his interruption, snapping that the defendant does maintain the presumption of innocence until she has actually been found guilty, and he would so instruct the jury." For that moment, Patty's big white bow seemed symbolic.

If Browning's one-dimensional study of the case was of a bank robbery and a bank robber, then Bailey's one-dimensional version was of survival and a survivor. There was no pattern to Bailey's brief forty-five minutes of discursive beseechings. One account said that during his oration, "he virtually isolated himself with the jury by removing the microphone from its cradle on the lectern and addressing himself solely to the seven women and five men sitting before him." There was no obvious structure, but there was a resounding theme--dying or surviving. He used examples, illustrations, analogies, extended metaphors to concretize the generic human instinct to live: ". . . in the Andes they ate each other to survive." He narrated a story of a man wrongfully condemned to death for killing his wife; he killed his executioner to escape death; he was then successful in proving that he had not killed his wife. The slogan was now in place, "We all have a covenant with death, and we all try to postpone that covenant." "There was talk about Patty's dying, and she wanted to live." In total contrast to Browning's *ad infinitum, ad nauseam* indexing

and cross-indexing of the evidence, Bailey shrugged off the need to discuss "the facts," referring to much of the trial as "contradictory evidence on peripheral matters." "She did rob a bank. You are not here to answer that question. We could answer that question without you. The question you are here to answer is why. And would you have done the same thing to survive? Or was it her duty to die, to avoid committing a felony? This is all this is about, and all the muddling and stamping of exhibits and the little monkeys and everything else that has been thrown into this morass doesn't answer that question."

In a way, these two protagonists did not clash on their material issues. They developed two cases that started from different major premises, different value positions. Perhaps if one accepts either of the two base lines, all will follow inescapably, but incompatibly. Yet, the more I studied the closing arguments, the more precisely I was able to articulate areas of clash, although some must be labeled as oblique attacks or clandestine skirmishes. Browning attempted to pile high the blocks of circumstantial evidence of Patty's intent, her willing participation as a member of the SLA: the shoot-out at Mel's, Patty standing guard more than twenty times with a loaded weapon, her seventeen months of hiding with no attempt to escape, her admissions to Thomas Matthews who was held hostage in the VW van; and, of course, Browning tediously took us back to the Hibernia Bank. He concluded each link in this chain of circumstantial evidence with a litany: "Is it reasonable to believe"; "Is it reasonable to conclude"; "Can you as reasonable people accept." Bailey clashed by shifting ground: "In every kidnap case, there are only two kinds of victims--those who survive and those who don't. All the ones who survive do exactly what they are told to do when they are told to do it, as you would too, and so would I." Only the most casual references were made to any of the specific details. Bailey admitted that the Mel's Sporting Goods Store was "a bad incident in the Patty Hearst case"--but "she would be dead if it were not for Mel's." This

conclusion was one of Bailey's many *non sequiturs*; yet the suggested image was vivid: the holocaust of May 17, 1974, on Fifty-fourth Street. Even the seventeen months of hiding could have been explained for some of the jurors as Bailey described a frightened "little girl" with "nowhere to go"; she had been "rudely snatched from her home, clouted on one side of the face with a gun butt, and taken on as a political prisoner."

One of the most spirited clashes was on the psychiatric evidence--or at least on the psychiatrists who gave the evidence. Browning had suggested that the jury consider all the expert testimony as a "wash." Like a law school professor, he carefully explained that the defense experts on brainwashing, mind control, and psychological coercion added little to the support of the actual legal defense which was introduced by Bailey--physical duress. Browning then launched another kind of attack on the experts, perhaps his most cutting for that day, but still cooly controlled. He characterized the three defense psychiatrists as being "professorial" and "academics," not "forensics experts." "They teach, write about, and specialize in some branch of psychiatry. They find their specialty in each examination. They are not accustomed to working with criminal defendants. They work with patients who want treatment." Browning called Dr. R. J. Lifton a "psycho-historian." He accused Dr. Louis West of laying out the defense strategy to the defendant so that she would enter on her cues. Browning read monotonously from West's "hypnotic" interview with Patty: "you were dragged out of your environment and forced to be subservient to the SLA . . . . You are suggestible." Bailey quickly removed any tarnish from Dr. West's halo by reminding everyone that West had been impartially selected by the court and that West had even had the "candor" to admit to the judge that long before Patty was arrested he had written a letter to Randolph Hearst expressing his sympathy. What higher honor could one possess? Bailey turned tenaciously on the psychiatrists presented by the prosecution, Dr. Harry Kozol and Dr. Joel Fort. For Kozol, Bailey used only excoriating and generalized

sarcasm, saying that for $8,000 or $12,500, Kozol had made up the story that Patty was an angry, rebellious child. Spewing a bit of venom, Bailey snarled that Browning had come up with two experts whose only claim was that they had testified many times in criminal trials. For Dr. Fort, Bailey saved his most cruel and exaggerated rhetoric. Fort had been the one who described Patty as a "queen" of the SLA, who had probably joined the group less than a month after her capture. Bailey had said behind closed doors after this testimony, "If the jury accepts Fort's opinion, that's the end of the case." Bailey felt that he had to destroy Fort--by any means necessary. He called Fort a "heel," a "psychopath," a "habitual liar." He said that Fort had testified so that he "could write another chapter in his book." He alleged that Fort had provided dope to Lenny Bruce, had been kicked out of the American Psychiatric Association, and had urged the Hearsts to get the case "fixed." With a mock apology to the jury for his uncontrolled anger toward Fort, Bailey said that if he could, he would destroy Fort; he would "cut off his legs so that he can never testify again."

What a jury actually does in the deliberations with the testimony of experts has always been an enigma. Usually during a trial, there are fairly equally qualified experts on each side; they are well paid for testifying; they often speak in mumbo jumbo on highly complex hypothetical questions; they reach diametrically opposite conclusions. For those of us in speech communication, there was one battle of the experts fought on the side lines. The defense unsuccessfully attempted to put on the stand Dr. Margaret Singer, a "speech analyst," who studied Miss Hearst's speech patterns and would have testified that she was not the author of the Tania tapes, but merely mouthed words written by others.

A less bellicose clash between the two advocates came from the issue of the defendant's own credibility. If the jury believed the Patty Hearst of the cavernous courtroom, the verdict would be "not guilty." Browning had to attack her credibility. He did so in the most traditional ways: showing inconsistencies in

an affidavit which she signed "under penalty of perjury" after her arrest as part of her attempt to get out on bail. He quoted often from a tape which had been made of a conversation with her good friend, Trish Tobin, in the visiting room of the jail. He told of the guns found in her last San Francisco hideaway and in her purse, even though her feared captors, Emily and Bill Harris, had never been to her house and had lived several blocks away. He showed again the yellow spiral notebook with all the obscenities and revolutionary rhetoric in the hand-writing of the defendant. He dangled the straight ammunition clip. In staccato tones, he rattled off the seventeen months of hiding, the clenched fist when she was arrested, her signing into jail as "an urban guerilla," her claim of "reflex" actions at Mel's. Browning saved for a rare display of emphasis his description of the defendant's taking the Fifth Amendment *forty-two times* even though the judge directed her to answer each of the questions. For a moment his uninspiring vocal quality was almost strident as he predicted that the judge would instruct them on the morrow that "refusing to answer questions after being instructed by the Court to answer may be considered by the jury in determining the credibility of the witness." Bailey brushed aside all such "signs of lying" or apparent "inconsistencies" in Patty's testimony by returning to his theme of survival. "Beating prisoners is no longer in fashion." The "little girl" on the tapes was saying to her parents, "Please, mom and dad, do what they say. Be nice. Do what they want you to do (as I have done)." Bailey dealt with the other picture of Patty, the convert to revolution, by simply saying that the "person who raised the clenched fist and made the Tobin tape died slowly," a poetic allusion reminiscent of a phoenix rising from the ashes or an epiphany from a James Joyce novel--but what was his argument? Bailey--knowing that the forty-two "I refuse to answer on the grounds that it may tend to incriminate me and cause extreme damage to myself and my family" could be fatal--said with tremors in his beautiful baritone, "She did not answer those questions because of her

fear." He mentioned the very recent bombings at San Simeon Castle and her father's mountain retreat, Wyntoon.

Neither attorney knew how to deal with the revolutionary politics of the case, especially radical feminism. Browning mumbled and stumbled as he tried to read from the "essay on armed women's liberation." Bailey ignored the issue by characterizing all members of the SLA as a "bunch of crazy psychopaths." He claimed that Patty had no political background, that her only brush with politics was that of being held all those months as a "political prisoner." He even said that he would never have entered the case if she had been a revolutionary. Browning carefully culled from the psychiatric testimony the picture of a "rebel in search of a cause": negative, bold, and opinionated on questions that she knew nothing about, deadened before the kidnapping, feeling trapped and disillusioned with Steven Weed, sarcastic, and maladjusted in her relations with her parents. During the conversation with Trish Tobin, Patty had asked about a feminist attorney. One wonders if a woman attorney--on either side--would have changed the strategy, the rhetoric, the result? Browning scoffed at the idea of anyone "into radical lesbianism or radical women's liberation" allowing another woman to be raped. He held up the little stone face found on Patty at the time of her arrest; it was the same little stone face "that Willie Wolfe gave her over a year and a half after he 'raped her,' according to her. She couldn't stand him, yet there is the little stone face that can't say anything, but I submit to you, [it] could tell us a lot." Bailey sneered at "little monkeys" as being simply part of the "morass." I wondered if the stone face, named Patty Hearst, could tell us a lot if she could speak for herself--not through doctors and lawyers and without the rules and rituals of the courtroom.

Another theme which was bitterly discussed outside the courtroom was only tangentially mentioned during the closing arguments: Do the rich have more rights than others? Or the rich have rights, too, don't they? Bailey simply warned the jury that they

must sort out the shibboleths such as "she's a rich kid, and she's got a defense that poor people can't buy." He claimed that Patty Hearst is famous "only because of what has happened." Browning's most effective reference was by innuendo: "Would you buy this story from anyone except Patty Hearst. If not, don't buy it from her."

Two methods of argument--residues and analogy--used repeatedly by both attorneys provided a very special motif. Browning had a whole chain of residues. He would list the alternative reasons for the bank robbery, then eliminate all except "to show that Tania was alive and that her participation was not bullshit." He stalked each SLA member during the robbery; residues: whom does that leave? the defendant. He returned to Mel's; she aimed at the top of the building; or residues: she aimed at the people outside the sporting goods store. Bailey was equally adept at the residues analysis. Patricia could have been in the bank because she needed money or because she was a rebel; or residues: she had no choice. Bailey more often used the disjunctive, either-or form: She could die *or* she could join them; I'll blow your head off *or* do as I say. The POW analogy was even more of a pattern in the tapestry; it was re-stitched and embroidered by both artisans. Browning tried to show all the crucial differences between Patty Hearst, the converted revolutionary, and a POW: the lack of any extended interrogation, the non-existence of an army or a territorial government, the wording of her confessions, her failure even to attempt escape. His most effective rip in the fabric of the analogy was the inability of the defense "to cite a single instance of a prisoner of war's committing an overt criminal act with his captors." Bailey's logos took several leaps as he told how POW's wrote bizarre confessions about germ warfare, hoping that no one would believe that they had written; "in the same way Patty Hearst hoped that you would not believe that she was the author of Angela Atwood's words." Bailey dramatically used the POW image as he placed the little girl back in the dark closet, where she was sexually abused and raped, threatened with death--"she wanted to live."

The perorations of the two contenders are interesting to contrast. Browning's two hour monologue ended with a plea to the jury to reject Miss Hearst's entire testimony as "not credible." "It's too big a pill to swallow. It just won't wash. Would you buy this story from anyone except Patricia Hearst? If not, don't buy it from her. The system won't work unless you do your job. You are not to consider the punishment. The doctrine of our criminal justice system is that guilt shall not escape or innocence suffer." Browning's later rebuttal was continually interrupted by unnerving objections by Bailey and by impatient, exasperated rulings by the judge. Browning seemed to move more and more to cliche admonitions to the jury: "Reject the defendant's version." "If you believe that she is guilty, for heaven's sake, say it." "Judge the case on its merits, on the evidence." Browning kept looking at his watch; his stiff gestures became squarer; he was somewhat discombobulated by the frequent interruptions. Nevertheless, for one keeping the flowchart, he scored some points: "Who is the real Patty Hearst? Could it be that she has actually been re-programmed by the defense attorney for this trial?" Browning finally brought himself to make his one reference all day to the kidnapping, "I'm sorry that she was kidnapped, but . . . ." He berated Bailey for certain misrepresentations; he urged the jury to remember what Fort had said, not the assassination on his personal and professional character; and he emphasized those *forty-two* unanswered questions.

Bailey's finale was low-keyed in comparison to the high's and low's of his forty-five minutes of battling for the minds and hearts of the jury: "There was talk about her dying, and she wanted to survive. Thank God, so far she has." Bailey was able to interrupt Browning, even after the prosecutor had commented on Hearst's having given the clenched fist salute inside this courthouse. Bailey strutted over and whispered to Browning; Browning apologized: "Mr. Bailey tells me that the defendant did not give the salute inside this courthouse. I am sorry. You can see from the picture (fumbling among the exhibits to find the picture) that she did give the clenched

fist after she was arrested. I cannot testify as to where it was given because I wasn't there." The judge had the last witty word in this anti-climax to this weird battle, "You couldn't testify anyway, Mr. Browning, because you aren't a witness."

Even in this most somber setting, there had been one or two other displays of rather sick humor. The arid Browning had made one "funny": Bailey had asked the jury to listen to Patty's turning of the pages in one of the tapes as proof that she was not the "architect" of the script. Browning, surrounded by notebooks and manuscripts, wondered if Bailey were suggesting that anyone who turned pages must have a ghost writer. With yet another wisp of wit, Browning described Patty's flight and hiding, "She didn't call us. We called her." A more contrived and even coarse bit of levity was Browning's insistence that a particular witness could certainly tell a male from a female--"even on Polk Street" (a favorite hangout for gays in San Francisco). Bailey twinkled once--as he removed the microphone, saying that he couldn't stretch himself across the lectern. Actually this bit of jocularity was merely the mechanism for Bailey's "down home chatty" style; he was liberating the space between himself and the jury. Ironically, tragically, the great F. Lee Bailey could not liberate the yawning space between himself and the defendant even though they sat shoulder to shoulder. He did not touch her as if he felt her; he did not look at her as if he saw her. Did the jury notice? Did the jury care?

Careful content analysis of the closing arguments would show repeated use of certain words, phrases, and images. Browning's tally sheet would include "unlikely," "incredible," "implausible," "reasonable," "programmed," "rebel in search of a cause." He found special delight in swinging the carbine, the straight clip, and the monkey figurine before the jury. Bailey salivated over "covenant with death," "survival," "little girl," "fear," and "she wanted to live." Both men seemed awkward as they tried to articulate the word "pig," an expression that must have bombarded the jury--it had been used twenty-two times in the last tape alone.

Browning seemed to favor another vulgarity and repeated it several times, Patty's remark to Trish Tobin that "she was pissed off" by her arrest.

If word choice and language style were often uninspired and marked by cliches, the demeanor of the two toward each other was even more stiff and rehearsed. Bailey was unctuous in his deference to his opponent; "Don't consider my remarks as personal attacks on Browning," "Innocent errors are sometimes made," "Unintentional mistakes are possible." Stridently, without actually accusing Browning of complicity, Bailey sneered that he found it "offensive that five government witnesses were able to find it in their hearts to tell stories on the stand helpful to the government that they had not told originally to the F.B.I." "Innocent errors are sometimes made." Browning made a few attempts to counter Bailey's scathing attack on Dr. Fort; like a true and valorous knight, he refused to fight mud with mud. The fighters gave little attention to their referee. Browning did repeat at intervals, "The judge will instruct you that." Bailey made no reference to "His Honor." Both advocates stroked the jury. Browning: "I don't mean to insult you." "You are capable of deciding." "System won't work unless you do your job." Browning seemed often to be lecturing the jury, telling them for the tenth time exactly how to use the oxygen mask. Bailey obeyed every rule of his interpersonal mentors: his eyes were riveted on the jury; he used not one note. Bailey feigned humility as he "apologized" to the jury for not producing evidence of Cinque's knowledge of brainwashing; he mockingly asked for ablution for his violent display of anger toward the "likes of Fort." Bailey almost achieved "consubstantiation" as he locked the jury in the closet with Patty for the fifty-seven days; and in that moment of their maximum vulnerability, he used the ultimate in pathos, "What you know in your hearts to be true . . . . She wanted to live." In addition to the lawyers' expressed attitudes toward each other, toward the judge, and toward the jury, they related also to the Family Hearst. Browning spoke of Patty's maladjusted relations with her family, as expressed by the psychiatrists; he mentioned

her own scathing remarks about her parents on the tapes. Bailey volunteered that he did not "perceive that the Hearsts had committed any crimes." The Family was stoically present during this final round. On March 19, as Judge Carter read his more than fifty instructions to the jury, Mrs. Catherine Hearst "rushed out of the courtroom, convulsed with tears." After thirty-nine days of composure on the front row and only thirty minutes before the jury deliberations were to begin, the anguished mother makes her exit from the sealed chambers of justice.

As I complete this analysis, the jury deliberates. How persuasive did they find the stolid, tedious, not flashy Browning? How did they react to his compelling logic, formidable amassing of evidence, catalogued analysis of issues, lectures on legalisms, detailed organization of even the minutiae? What did they say of the charismatic, raging, mesmerizing, meandering, manipulating, talented F. Lee Bailey? Were the closing arguments even mentioned in the jury room? Did they grapple at all with the long list of instructions? Were they able to speak at all of what they saw, or feared they saw, of themselves in this woman/witch, frightened child/tough revolutionary, victim/villain, who was called Patricia Hearst? How did they reach their decision? Will the Patricia Hearst jurors talk, write, recall, share, and tell? I hope so. All of us need to know more about this adversary proceeding where we set the parties fighting and then turn to the jury to determine truth, do justice, and decide the fate and future of Patricia Hearst, "all but lost in her big leather chair."

NOTES

Unless otherwise specified, all quotations from the arguments and instructions are taken from the San Francisco *Chronicle* and *Examiner*, March 18, 19, 20, 1976.

[1]Stephen Weed, *My Search for Patty Hearst* (Crown: New York, 1976), p. 3.

[2]William Davenport, *Voices in Court* (Macmillan: New York, 1958), p. 2.

[3]Alpheus Mason, "A Review of *Attorney for the Damned* by Arthur Weinberg," *Book Find News*, No. 219.

THOUGHT CONTROL IN THE PATRICIA HEARST TRIAL*

JOHN H. TIMMIS III**

She had been Patricia Campbell Hearst, storybook heiress; then Comrade Tania, urban guerrilla; by act of grand jury, merely Patty Hearst, defendant.

Hearst was on trial for her part in the April, 1974, armed robbery by the revolutionary Symbionese Liberation Army of a San Francisco branch bank. Prosecuter James Browning attempted to prove that Miss Hearst was present of her own free will and volition. Defense attorney F. Lee Bailey attempted to prove that she acted under unusual duress and coercion, participating in the holdup because her mind was fully controlled by the SLA.

Clearly, then, both sides narrowed the *stasis* of the case to a single question for decision: the condition of Patricia Hearst's mind.

The purpose of this paper is to examine the position of the defense as it (1) stands under law, and (2) relates to psychology. That is: Was Bailey's position statutable, and to what degree was it "arguable"?

---

*This essay was written and edited before Mr. Bailey presented his closing argument to the jury.

**John H. Timmis III is Associate Professor of Rhetoric and Communication, Ohio University, Athens, Ohio.

Patricia Hearst's relationship with the SLA began as a kidnap victim; any subsequent act of hers must be related to that fact. Anglo-Saxon law has always ranked the severity of a crime by the degree of premeditation and intent involved. Therefore, if Bailey could convince the jury that she was genuinely kidnapped, subjected to force and coercion, ultimately broken by her captors, and controlled or coerced into the crime, she should go free. Rhetorically, the *topos* is the ancient *alieni juris* (lit. of another's law), pleading the defendant's inability to form the criminal intent necessary to be convicted of a crime. The position is statutable both *ad litteram* and *stare decisis*.

During the inventive-creative stages of working up his plan, the counsel for the defense diagnosed his entire case as a legal, not juridical, issue. If the charge were to be answered in this strict manner, Bailey's justifying motive; of necessity, would be that the defendant's acts would be permissible by the terms of the law. Normally, the burden of proof would lie with the government, but the justifying motive logically would require the defense to convince the jury that the point to adjudicate in the case was the legality of Hearst's actions with reference to statute criminal law.

Now, to the rhetorical critic it is clear that once Bailey chose his angle-of-attack upon the charges, once he had selected his major line of defense, his *subsequent* field of inventive-creative maneuver was, thereby, restricted. Such a narrowing of the rhetorical alternatives occurred because once a specific defensive strategy was selected, then the specific defensive tactics followed from logical necessity: the nature of the initial rhetorical commitment dictated the nature of the argumentative follow-through. As a result, the case was tactically integrated in at least four dimensions: (1) selection of data; (2) organization of data; (3) association and discrimination among various data; and (4) the criteria of judgment applied to various data and argumentative alternatives. An analysis of the forensic development of these four dimensions now follows.

The defense led off with an expert witness on thought control, Dr. Louis J. West, before a jury carefully chosen to be forty-two or more years old, hence contemporaries of the Korean War. Dr. Martin Orne, a psychiatrist at the University of Pennsylvania, and Dr. Robert J. Lifton, a psychiatrist from Yale University, also testified for the defense. Instead of tracing out their testimony *seriatim*, we shall integrate and develop it as a whole, making reference to the theory and technique of mind control.

The testimony of the expert witnesses developed the theoretical basis of coercion by means of mind control. Explicated were the conditioned reflex, the concept of homeostasis, the adient response, avoidance-avoidance conflict, valence change, reconditioning, and indoctrination. Each of these concepts was warranted by generally-accepted psychological-psychiatric practice.

A typical timetable for breaking-down any person by means of a highly specialized system of mind attack was elaborated and then applied specifically to Patricia Hearst.

During the first step, the subject was kept under constant surveillance. She was held in isolation in a very small closet. She had contact with no one. The eating, toilet, light, heat, sleeping position, sleeping hours--every part of her environment was rigidly controlled by her captors. The effect upon the prisoner was anxiety, then despair. The isolation created acute depression. "Patty Hearst was dehumanized. She told me, 'I felt like a thing in the closet.'" [Lifton] Then, the work of "the interrogator" was begun.

The interrogator had two initial purposes: first, to befriend the prisoner, and, second, to convince her that she was going to be killed by the other captors. Concurrently, the interrogator convinced the prisoner to write an autobiography and to keep a diary. The interrogator was never satisfied with the information received and demanded more and more. Any omission or discrepancy in the life story of the prisoner was interpreted as an unfriendly act and an attempt to mislead her only friend, the interrogator.

In the second stage of the break-down process, what was learned from the autobiography and diary of the prisoner was used to harass her. She became upset and disorganized. The interrogator often withdrew friendship and interest. The other captors inflicted severe punative measures: rape, beatings, further sensory deprivation, and threats of death. During this entire time of fifty-seven days, the only kindness the prisoner received came from her interrogator. An important and vital relationship was established in the mind of the prisoner: the interrogator was identified as the sole remaining chance for life. "A classic example of coercive persuasion: it was a case of be accepted by the SLA or be killed." [West] Four alternatives only existed: a change in valence towards the interrogator (disassociation--West, Orne); continued, unrelenting conflict; insanity; or suicide.

We must emphasize that the procedure followed no rigid timetable, because his aim was not simply to break the prisoner down, but also to produce a permanent change in her basic attitudes and behavior.

During stage three, the interrogator cultivated a closer relationship with the prisoner and urged upon her the view that the only chance for life was to cooperate. The prisoner became more and more amenable, exhibiting a "survivor syndrome." [Orne] She was tired, afraid, and alone, and had no one to turn to except the interrogator. She was immediately rewarded. She was permitted to sleep, to rest, to eat better, and above all to live.

Stage four was indoctrination. The treatment was long and arduous. The goal was to make a converted revolutionary of the prisoner. The indoctrination was conducted skillfully. It consisted of two parts: the first characterized by attacks upon the political and economic system of the country; the second by ridicule and humiliation of the prisoner, a comparison of her former way of life with that of the SLA. The expert witnesses explained that the results of indoctrination are diabolical, nearly incredible to the layman. In the case of Hearst, they said, "she performed exactly as she had been conditioned to do." [West]

The SLA established a closed system of releasing to the prisoner only information which reflected *bad* news, e.g., the food give-away, F.B.I. and Justice Department statements, parental behavior, and the destruction of the house where she was thought to be hidden. Extreme isolation was created, the feeling of abandonment. She felt that she had to go it alone in order to survive. No one cared whether she lived or died except her captors. She became the victim of "a traumatic neurosis . . . . In fact, the only [other] time I've seen it is in prisoner of war returnees." [Orne]

The defense witnesses, let to this point by Bailey, had no trouble demonstrating that a normal person can endure little more than thirty days of confinement, harassment, deprivation, and threats. "There is no defense against coercion-persuasion," Lifton testified. "If one's captors are sufficiently determined and motivated, they can break down anyone."

The agate points, upon which the entire defense turned, were (1) whether the jury believed the testimony of Patricia Hearst, and (2) whether the alleged coercive persuasion and subsequent indoctrination could have changed her personality so completely, especially as related to two crucial acts: her failure to escape when medium or low risk opportunities arose and her providing armed cover for the Harris' escape from Mel's Sporting Goods store.

The psychiatric witnesses claimed such behavior to be the ultimate outcome of indoctrination: the subject can be trusted in all ways and all situations to behave as "programmed." We speculate that much will depend upon Bailey's summation of the testimony of his experts. We expect him to cite statistics from the Korean War where one out of three American prisoners collaborated with the Communists in some way, either as informers or propagandists. We believe he will remind the jury of the professional soldiers reduced to a pathetic and pliant state. We predict he will amplify the similarity between POW behavior and Patricia Hearst. (Boston attorney Lawrence O'Donnell, who represented POW's, suggested to a *Time* reporter what he expects the final stand of the defense to be:

a classic case of indoctrination: "We sent people to the Air Force Academy and to West Point, and yet they capitulated and signed the Stockholm Peace Petition and all the rest. I just don't know how a 19-year-old kid could have been expected to handle it any better.")

We have developed the "extreme physical coercion" and "thought control" defense of Patricia Hearst by defense counsel F. Lee Bailey. Our development has followed the structure, interconnections, and general theses of the defense, rather than its exact point-by-point chronology in the courtroom testimony, in order to produce a synthetic reconstruction of the rhetorical methodology.

Taken as a whole, the defense was marked with harmony of strategy, tactics, thought, and purpose. The broad principle which unified the rhetorical resources of the arguments is the principle at law that a defendant cannot be found guilty of a crime if criminal intent is absent. Consequently, we believe the attention of the jury will focus upon "thought control" as a standard for interpreting the actions of Patricia Hearst.

This much is clear: Bailey's defense, as conceived on the basis of criminal intent, was legally, logically, and rhetorically near-perfect. Weakness can be found in it only at the level of microscopic detail, and these defects are all trivial. The defense utilized all the resources of the law, the particular strengths of thought reform as psychological explanation for behavior, and the individual strengths of the witnesses, including the defendant herself. Indeed, the case was so carefully structured, organized, and presented that it was a miniature in most proportions and details of the several thousand pages of committee reports to the House of Representatives on *Communist Psychological Warfare: Brainwashing* (85th Cong., 2d Sess., Mar. 13, 1958), on *Thought Control* (85th Cong., 2d Sess., Apr. 7, 1958), and to the Senate, *Communist Interrogation, Indoctrination, and Exploitation of American and Civilian Prisoners* (Report No. 2832, 84th Cong., 2d Sess. Dec. 31, 1956). Bailey almost faultlessly matched the defendant's 591 day odyssey

with the well-documented and well-known (to the jurors to be sure) travails of American POW's. Harvard Law Professor Alan Dershowitz said, "Bailey is virtually the only criminal lawyer I've met who has mastered the art of pre-trial investigation."

The defense strategy had one considerable weakness: it was a "spread zone" type of defense, extremely vulnerable to concentrated attack. But the only alternative was to plead insanity. Even if argued successfully, such a strategy would have carried its own special risk: confinement to a mental institution.

The nature of the case forced Bailey to adopt an unorthodox and complicated defense strategy. If he gains the acquittal, he will have used "thought control" successfully for the first time as a defense in federal court.

ERIS

ERIS encourages uou to respond to anything that appears in EXETASIS, *whether the nature of your remarks is condemnatory or laudatory.*--Editors

The following statements are excerpts from the *Los Angeles Times* of March 21-22, 1976.

The Verdict

SAN FRANCISCO--Patricia Campbell Hearst, the kidnapped heiress who became one of America's most celebrated fugitives from justice, was found guilty Saturday [March 20, 1976] of joining her terrorist abductors in the armed robbery of a San Francisco bank.

The Prosecution: James L. Browning

Bailey had dismissed him as "a decent man," and a colleague had chided, "Bailey versus Browning? The only question now is what school Patty will enter next year."

But now it was his [Browning's] turn to do some brushing aside: "Mr. Bailey," he said laconically, "put on a spirited defense."

"I am more familiar with the kind of people who live in the Bay Area than he is," Browning said. "At the same time, I'd have trouble in Boston. There'd be a different approach in an East Coast Court."

Most impressive in his effort, according to the consensus, was his final argument. Not that it was flawless. At least twice he made what appeared to be errors in fact. Twice, the record shows he was forced to tell the jury, "If I am wrong I apologize." But the final argument was a point-by-point recitation of the facts, and in the end that was all the prosecution needed.

The Defense: F. Lee Bailey

If F. Lee Bailey goes to hell when he dies, his first project will be to get everybody acquitted.

If this was the trial of the century, Bailey's reaction to the verdict was the understatement of the century: "We are not too thrilled about it," he told reporters.

And so, with all the chips on the table, Prosecutor James L. Browning argued evidence. Bailey talked philosophy. They were the odd couple, a contrast right to the finish. Browning stood distantly at a lectern in the courtroom, reading to the jury from notes into a microphone. Bailey stood a few feet from the jury box, extemporaneously using his best just-between-you-and-me style, as if the 12 jurors were in his living room.

"Does the right to survive include the right to kill?" Bailey pondered later. "I think it certainly includes the right to rob a bank."

Bailey has always put a lot of stock in closing arguments. In this instance, his wife was concerned about the 45 minute presentation. "He left out so much," Lynda Bailey said. "He was going to say so much more, but over lunch at the last minute he decided: 'I don't think they want to hear that.'"

"If I had wanted to touch all the bases, we would still be at it," he said. "The burden I have to bear is of being perceived as the fast gun," said the theatrical attorney. "It can be a liability in a short trial, but over the course of a long trial I think I overcame it."

Bailey leaned back and after eight weeks, he finally said it: "You know what? I'm tired as hell."